In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-116

MARION BUTLER STUART,
Petitioner,

vs.

RUTH M. BUTLER, PAUL B. BUTLER, JR.,
FIRST NATIONAL BANK OF NEVADA,
Respondents.

Petition for a Writ of Certiorari and Motion to Vacate the Judgment Below of the United States Court of Appeals for the Ninth Circuit

Petitioners' Reply to Respondents' Brief in Opposition

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SUBJECT INDEX

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Petitioners' Reply to Respondents' Brief in Opposition

I. REPLY TO RESPONDENTS' LEGAL ARGUMENTS.

Respondents made no perceptible legal argument in opposition to Petitioner's Petition for Certiorari and Motion to Vacate Judgment Below. They gleefully pounce upon the printing errors contained in several of Petitioner's cita-

tions, but have apparently had no difficulty finding the named cases, and don't claim to be prejudiced by the missed citations. Furthermore, besides attempting to distinguish Petitioner's case authority on the facts, Respondents do not at any point attack the main legal arguments raised in the Petition for Certiorari, to-wit: (1) That summary judgment is improper if there are material disputed issues of fact; and (2) That reversal or vacation of the judgment below is appropriate in this Court where the action of the lower courts were *clearly* improper.

II. REPLY TO RESPONDENTS' FACTUAL ARGUMENTS.

Respondents devote a large portion of their Brief in Opposition to a sarcastic personal attack on the Petitioner. It is unfortunate that they have so little respect for this privileged forum that they seek at this point to inject numerous facts into the record which have never been introduced in evidence—most of which they well know to be patently untrue.

The one concrete factual allegation which the Respondents make is that Petitioner was placed on notice of the existence of the family partnership here at issue in 1946 because her brother "had been given stock but she had not."[1] Apparently, Respondents reason that because Petitioner was not given stock by her father she was put under some duty to investigate the source of her brother's gift, which would then have led to her discovery of the existence of the family partnership. This argument is legal nonsense, for no rule of law exists forcing children to investigate the source of gifts from their parents to them or their siblings. This reasoning is even sillier when ap-

1. Brief in Opposition, page 2.

plied, as here, by the Respondents, because they propose a rule of law whereunder a child is put under a duty to investigate the source of gifts which she *doesn't* receive from her parent. The attempt to bootstrap the aforestated specious legal reasoning into the factual conclusions that Petitioner had notice that she had been defrauded by her father in 1946 can best be described by the phrase *non sequitur*.

In fact, the only evidence of any kind that Petitioner knew about the family partnership at issue here—and the evidence upon which the District Court relied in granting summary judgment in this case—was her alleged signature on various partnership documents.[2] The critical questions in this case have always been: (1) Whether the signature on the documents relied upon by the District Court is, in fact, the signature of the Petitioner (Respondents say it is; Petitioner both alleges and has proof that it is not.). (2) And, assuming *arguendo*, that the signature on the trust documents is that of the Petitioner, whether she can be conclusively presumed to know the contents of a document upon which her signature appears. (No such rule of law exists.)

III. CONCLUSION.

The crucial issue in this case has become *when* the Petitioner had knowledge of a family partnership sufficient to put her on notice that she had been defrauded by her father on the dissolution of that partnership. The District Court decided that the Petitioner had such knowledge twenty years ago, relying on the fact that her apparent signature appeared on certain partnership documents dated in 1946. However, there is substantial evidence that neither

2. Appendix to Petition for Certiorari, page 8.

the Petitioner nor any of the other surviving members of her family ever knew about the family partnership at issue here. By deciding that Petitioner had knowledge of the family partnership in 1946, the District Court decided a crucial and disputed issue of material fact. Such a holding abuses the power of summary judgment, and Petitioner thereby prays that the instant Petition for Certiorari or to Vacate The Judgment Below be granted.

Respectfully submitted this 15th day of September, 1976.

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